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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/681,799	06/07/2001	Nagendra Rangavajhyala	112701-194	2978

29157 7590 10/16/2003

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EXAMINER

PADEN, CAROLYN A

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 10/16/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 09/681,799	Applicant(s) RANGAVAJHYALA ET AL.	
	Examiner Carolyn A Paden	Art Unit 1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 7-31-03
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 9-19 and 26-32 is/are allowed.
- 6) ☒ Claim(s) 1,5-8,20,24 and 25 is/are rejected.
- 7) ☒ Claim(s) 2-4 and 21-23 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)         | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____                                    |

Applicant's arguments relating to the rejection of the claims over Fritsch are persuasive. Accordingly the rejection has been dropped.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 5-8, 20, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Euber (6077558).

Euber discloses elemental nutritional products for use in infant formula. The protein source is stated to include soy protein hydrolysate. The carbohydrate source includes a variety of carbohydrates other than lactose. The formulas are hypoallergenic infant formulas.

Claims 1, 5-8, 20, 24 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Euber (6,436,464).

Euber discloses elemental nutritional products for use in infant formula. The protein source is stated to include soy protein hydrolysate. The carbohydrate source includes a variety of carbohydrates other than g anticipated by Euber (6077558).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 5-8, 20, 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Euber (6,077,558 or 6,436,464) as further evidenced by Gandhi (6,322,846).

Euber discloses elemental nutritional products for use in infant formula. The protein source is stated to include soy protein hydrolysate. The carbohydrate source includes a variety of carbohydrates other than g anticipated by Euber (6077558). The claims appear to differ in the selection of soy protein hydrolysate as a protein source and in the omission of lactose. It is well known in the art that infants may suffer from lactose intolerance as well as from a host of other maladies. It is further well known in the art that soy milk does not contain lactose and may be easily consumed by individuals with lactose intolerance (column 1, lines 19-24 of Gandhi). Thus with the reference before him, it would have been obvious to one of ordinary skill in the art to utilize a soy source to provide protein

and carbohydrates to an infant formula in order to minimize the inclusion of lactose in the nutritional formula of Euber.


Claims 9-29 and 26-32 are allowed.

Claims 2-4 and 21-23 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is 703-308-3294. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

  
CAROLYN PADEN 10-9-03  
PRIMARY EXAMINER  
GROUP 1300 1761